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C O N F I D E N T I A L HARARE 001453

SIPDIS

NSC FOR SENIOR AFRICA DIRECTOR JFRAZER
LONDON FOR CGURNEY
PARIS FOR CNEARY

E.O. 12958: DECL: 06/19/2012
TAGS: PGOV PHUM ASEC EAID ZI
SUBJECT: ZIMBABWE GOVERNMENT BANS SOUTH AFRICAN LAWYER FROM
ASSISTING MDC LEGAL CHALLENGE TO ELECTION

Classified By: Political Officer Todd Faulk for reasons 1.5 (b)
and (d)

¶11. (SBU) The June 19 edition of the independent "Daily News" reported that the Government of Zimbabwe (GOZ) has denied MDC President Morgan Tsvangirai's request to have renowned South African attorney Jeremy Gauntlett represent him in the MDC's legal challenge to the March presidential election.

According to the article and embassy sources, for a senior attorney or advocate from outside the country to argue cases in Zimbabwe, the Minister of Justice (MOJ) must grant an exemption certificate in order for the trial to proceed. In Gauntlett's case, the Ministry of Justice permsec argued that the legal challenge "is not so complex as to require the services of a legal practitioner from outside Zimbabwe. The country has, in fact, a number of Senior Counsels who can effectively represent your client," the article quoted. The permsec also stated that the MDC should obtain a commitment from the Reserve Bank of Zimbabwe for the forex to pay for the services of the South African attorney. (Comment: The Reserve Bank, which has a long waiting list for forex, would most certainly not give it to the MDC. This would increase the Zim dollar cost to the MDC by about ten times if it went to the parallel market. End comment.)

¶12. (C) Gandi Mudzingwa, Tsvangirai's principal assistant, told poloff that Minister of Justice Patrick Chinamasa has decided to make a political issue out the case. After consulting with the MDC's lawyers, Mudzingwa believed that the only issue is whether or not Gauntlett is registered to practice law in Zimbabwe. However, according to the embassy's political assistant, who was a practicing attorney in Zimbabwe, the Legal Practitioners' Act is clear on stipulating that it is entirely up to the Justice Minister to decide whether or not to grant an exemption to foreign attorneys. If Gauntlett is registered here, then MOJ permission is not necessary. However, if he is not registered, then the most he could do is draft papers and give free advice and instructions to the MDC's local attorneys. He could not sit on the bench in court, argue the case before the judge, or be named on any documents. He would not be entitled to legal fees under the law, either, according to our assistant. Furthermore, registering to practice law in Zimbabwe is a lengthy and cumbersome process--it requires sitting for five exams--and there are not many foreign attorneys who have done it. It is not clear whether Gauntlett is registered in Zimbabwe, but we presume that he is not since the MDC applied for an exemption with the High Court.

¶13. (C) Comment: Anyone intending to pay Gauntlett for his services in the MDC's legal challenge is on shaky legal ground. It might be possible for Gauntlett to agree to provide pro bono services in the case, but given the restrictions described above on Gauntlett's ability to operate in Zimbabwe, he may be more apt to offer limited free advice in any case. The MDC's options appear limited since there are not many South African attorneys registered in Zimbabwe, and local senior counsels are subject to intimidation and harassment. Since the MOJ must grant exemptions to foreign attorneys on a case-by-case basis, and for only a limited period of time, the GOZ could repeatedly use this tactic to tilt in its favor the legal challenge playing field. End comment.

SULLIVAN